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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION N |
|-----------------|-------------|----------------------|---------------------|----------------|
| 09/602,198 | 06/22/2000 | Theodore G. Habing | 068757.P063C | 8408 |

37394 7590 10/18/2004

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT PAPER NUMBER

3764

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/602,198

Applicant(s)

HABING ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

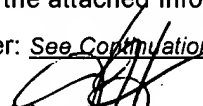
Claim(s) allowed: _____.

Claim(s) objected to: 52, 57 and 67.

Claim(s) rejected: 32-36, 40, 42, 43, 45-47, 49-53, 55-57, 59, 60 and 65-67.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


Victor K. Hwang
Patent Examiner


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Continuation of 2. NOTE: New issues requiring further consideration and/or search include the secondary axes inclined from the vertical in a forward direction "less than horizontal"; "stops to limit the inward or outward travel of the press arm handles are not necessary"; and the arms "are inclined from the vertical."

Continuation of 5. does NOT place the application in condition for allowance because: the claims would remain rejected as in the Final Office action. Applicant's amendments to the independent claims do not distinguish the claimed invention from the prior art applied. In each independent claim, the preamble has been amended to indicate that the exercise apparatus enables a full butterfly movement. The added description is not given patentable weight because it has been held that a preamble language may not be treated as a limitation where it merely states an intended use of the system and is unnecessary to define the invention, the U.S. Court of Appeals for the Federal Circuit ruled May 8 (Catalina Marketing Int'l Inc. v. Coolsavings. com Inc., Fed. Cir., No. 01-1324, 5/8/02). With regard to amendments "wherein the press arms assume a natural rest position in which press arm handles are at a comfortable starting position for performance of a press exercise" is met by all of the prior art relied upon since "a comfortable starting position" is a relative description dependent upon each individual user and makes the phrase indefinite

Continuation of 10. Other: Applicant's request to vacate premature final rejection has been considered and is not granted since the claims amended January 23, 2004 included limitations not previously presented in the claims filed July 17, 2003. The added limitations of the secondary arms "extending downwardly at rest" in claim 32, "extend downwardly below the horizontal when at rest" in claim 46, and "extend downwardly at an angle below horizontal" in claim 60 were not previously presented in the claims. Though the limitations may be considered to have been expected to be claimed, the prior art relied upon was of record and presented in previous Office actions. The new grounds of rejection were necessitated by applicant's amendment and the final rejection was not premature.